

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

OHIO VALLEY ENVIRONMENTAL COALITION,  
WEST VIRGINIA HIGHLANDS CONSERVANCY,  
APPALACHIAN VOICES, and  
THE SIERRA CLUB

Plaintiffs,

v.

CIVIL ACTION NO. 1:19-00576

BLUESTONE COAL CORPORATION,

Defendant.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is defendant's motion to continue trial. (ECF No. 100.) For the reasons that follow, the motion to continue is **GRANTED**.

**I. Background**

On October 6, 2020, this court denied defendant Bluestone Coal Company's motion for a stay of further proceedings and scheduled trial to commence on October 15, 2020. The same day, defendant moved "to continue the trial of the above-styled case for a short period of time that is convenient to the Court and the parties." (Id.) The reason given is that defendant's trial counsel, Michael W. Carey, needs to care for his dog, who will be recuperating from "bilateral parotid gland transposition surgery on his eyes" until at least October 18, 2020. (See id.)

Plaintiff opposes the motion, arguing that defendant has not shown that Mr. Carey is the only person who can care for his dog and the only attorney who can try the case. (See ECF No. 101.)

## **II. Discussion**

"The United States Court of Appeals for the Fourth Circuit has held that a district court has broad discretion in denying or granting a motion for a continuance." Knecht v. Erie Ins. Prop. & Cas., No. 2010 WL 2598227, at \*2 (N.D.W. Va. June 25, 2010) (citing United States v. Speed, 53 F.3d 643, 644 (4th Cir. 1995)); see also Latham v. Crofters, Inc., 492 F.2d 913, 914 (4th Cir. 1974). "In determining whether to grant a continuance, courts consider whether the party seeking the continuance has shown good cause." Daugherty v. Ocwen Loan Servicing, LLC, 2016 WL 2766671, at \*1 (S.D.W. Va. May 12, 2016) (citing NKR, Inc. v. Forestland Group, LLC, 2005 WL 1123629, at \*3 (W.D. Va. May 11, 2005)).

Here, the proffered good cause is trial counsel's need to care for his dog. Although this is not good cause for a lengthy continuance, the court finds that this is good cause for a very modest continuance of two business days. This is a close call, but the court notes that it scheduled a new trial date with less than ten days' notice, which makes defendant's request for a very modest continuance reasonable. The court believes that this result appropriately balances plaintiffs' interest in

getting this case to trial (which has already been delayed twice upon defendant's request) and defendant's interest in having its choice of trial counsel.

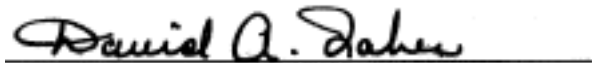
### **III. Conclusion**

For the reasons expressed above, defendant's motion to continue the trial is **GRANTED**. The court hereby sets this matter for trial on **October 19, 2020, at 9:30 a.m., in Bluefield.**

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record.

**IT IS SO ORDERED** this 9th day of October, 2020.

Enter:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Senior United States District Judge